

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD G. and NANCY E. THURSBY,	:	NO. 14 – 02,549
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
	:	
LUCKY-9 BOAT CLUB, INC.,	:	
Defendant	:	Non-jury Trial

OPINION AND VERDICT

Before the Court is Plaintiffs’ request for a declaration that Plaintiffs are entitled to use a well and boat ramp on Defendant’s property, as well as their request for monetary damages in connection with Defendant’s denial of their use of the boat ramp. Also before the court is Defendant’s counter-claim for an order requiring Plaintiffs to remove newly-installed speed bumps from the right-of-way across Plaintiffs’ property and to remove an electrical outlet and wood pile they installed on Defendant’s property, and for damages in connection therewith. A trial was held on October 29, 2015. Counsel requested and were granted the opportunity to attempt to resolve the matter amicably, but the court has been informed that no such resolution is possible. The matter is thus ripe for decision and the court enters the following:

FINDINGS OF FACT

1. Plaintiffs and Defendant own adjacent parcels of land in Piatt Township, along the West Branch of the Susquehanna River.

2. Defendant's parcel is the farthest east of 15 contiguous parcels, at the end of a private lane which crosses the other parcels, including that of Plaintiffs. This lane provides access to all of the parcels from a public road and was established by deed as a right-of-way. Plaintiffs' parcel is directly to the west of Defendant's parcel. The river borders the north edge of the parcels.

3. Defendant installed a boat ramp on its property some time prior to 1970 to provide access to the river for its members. In the past, Defendant allowed the use of that ramp by other property owners on the lane, including Plaintiffs, none of whom are club members. At some point after allowing others to use the ramp, and because persons who were not property owners were using the ramp without permission, Defendant issued written "permits" to Plaintiffs and others on the lane to evidence their permission to use the ramp. Defendant withdrew their permission and restricted use of the ramp to only club members in 2013.

4. In 1968, Defendant sought from Plaintiff's predecessor-in-interest permission to relocate the right-of-way as it crossed Plaintiffs' property. As this relocation would benefit Plaintiffs' predecessor-in-interest by moving the lane farther from their building, that permission was granted, and the lane was moved.

5. In 1989, Defendant and a few other near-by property owners (including Plaintiffs) agreed to drill a well on Defendant's property and to share the expenses of drilling and maintenance in proportion to the number of lots owned by each party.¹ Plaintiffs and the others have used the well since then and have contributed to some of the expenses. Recently, Defendant has attempted to have the parties enter a written agreement regarding these costs (seeking to change the original agreement whereby the parties shared costs in proportion to the number

of lots owned to one whereby the parties would share costs according to the number of trailers on each property) but such has not been accomplished. Defendant has not prevented Plaintiffs from using the well, however, nor from accessing the water line from the well.

6. In response to certain of the boat club members' failure to abide by the posted 10 mph speed limit sign on the lane, Plaintiffs installed four speed bumps on the lane on their property. The speed bumps are 19', 28' and 51' apart, and range from 2 ½" to 4" in height. The speed bumps do not prevent access to Defendant's property.

DISCUSSION

Right to use the well

Plaintiffs seek a declaration that they have a right to use the well on Defendant's property, including use of the water and access to the line, arguing that they hold an irrevocable license to do so. Defendant agrees that Plaintiffs are entitled under the original agreement to use the well, however, and have not denied Plaintiffs the use of the well, nor access to it.² While there was some testimony regarding the necessity to drain the line in winter, Plaintiffs admit they have not been denied use of the well, and state that they are afraid they might be denied its use in the future. As there has been no injury to Plaintiffs, they are not entitled to any equitable relief. The Haig Corporation v. Thomas S. Gassner Co., Inc., 63 A.2d 433 (Pa. Super. 1949). Similarly, Defendant's impromptu request

¹ Defendant owned four lots, Plaintiffs owned one, and the other two landowners each owned one. Thus, Defendant was to pay 4/7 of the costs, Plaintiffs to pay 1/7, etc.

² Defendant agrees Plaintiffs have an implied easement to "access the Boat Club property for purposes of installing and maintaining any underground supply lines that may be necessary in order to allow the reasonable use of the water from the well." Defendant's Proposed Finding-of-Fact No. 51, filed October 27, 2015.

that the court modify the original agreement respecting the required contributions is misplaced, and the court will decline to do so.

Right to use the boat ramp

Plaintiffs argue that they have a license to use the boat ramp because they allowed Defendant to relocate the right-of-way across their property and were promised the right to use the boat ramp in exchange for such permission. The court finds that no such exchange occurred, however. Plaintiffs were allowed to use the boat ramp in accordance with Defendant's policy of allowing all property owners along the lane to use it, not in exchange for having allowed the lane to be moved. Therefore, the right to use the ramp was granted by revocable license, and that license was revoked by Defendant in 2013. Plaintiffs are not entitled to further use, nor are they entitled to damages for any costs incurred in gaining access to the river by other means.

Speed bumps

Defendants seek the removal of at least some of the speed bumps placed by Plaintiffs on their property. The speed bumps were placed to slow traffic as it crosses Plaintiffs' property and the court finds that in general, the use of speed bumps is a reasonable measure. According to the Court in The Haig Corporation v. Thomas S. Gassner Co., Inc., *supra*, "where land is subject to the easement of a private right-of-way, the owner of such land may erect a proper swinging gate at the public road for the protection of his property. Gates or moveable bars, if not an unreasonable obstruction to the use of the alleyway, are not an unlawful abridgment of the right of passage under easement." Id. at 435, citing Helwig v.

Miller, 47 Pa. Superior. Ct. 171. If a gate may be installed, a speed bump certainly may be installed.

The court does agree with Defendant however, that the speed bumps as configured are not reasonably necessary to accomplish their purpose. There are too many, too close together. The court believes that Plaintiffs' purpose may still be accomplished if the two middle bumps are removed.

Defendant presented no evidence that any damages have been suffered as a result of the speed bumps. Therefore, this claim will not be addressed further.

Electrical outlet and woodpile

Although Defendant made a claim for damages and sought removal of an electrical outlet and woodpile allegedly placed on their property by Plaintiffs, no evidence about this issue was presented at trial. Therefore, this claim will not be addressed further.

Accordingly, the Court draws the following:

CONCLUSIONS OF LAW

1. Because Defendant has not denied Plaintiffs the right to use the well, Plaintiffs are not entitled to any relief from the court.
2. Plaintiffs' right to use the boat ramp was based on a revocable license which has since been revoked and Plaintiffs therefore have no right to use the boat ramp.

3. The arrangement of the speed bumps presently located on Plaintiffs' property are an unreasonable infringement on Defendant's use of the right-of-way and therefore Plaintiffs will be directed to remove two of those bumps.
4. Neither party is entitled to an award of damages against the other.

VERDICT

AND NOW, this 2nd day of December 2015, for the foregoing reasons, the court finds in favor of Defendant and against Plaintiffs on Plaintiffs' claims, in favor of Defendant and against Plaintiffs on Defendant's Counter-claim Count 1, and in favor of Plaintiffs and against Defendant on Defendant's Counter-claim Count 2. Plaintiffs are directed to remove the two middle speed bumps from the right-of-way across their property by May 20, 2016.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph Musto, Esq.
Frank Miceli, Esq., 146 East Water Street, Lock Haven, PA 17745
Gary Weber, Esq.
Hon. Dudley Anderson